

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

TROY A. SYKES,

Plaintiff,

v.

AVENAL STATE PRISON, et al.,

Defendants.

Case No.: 1:23-cv-0966 JLT SKO (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS AND DEFENDANTS**

(Doc. 14)

Plaintiff seeks to hold defendants liable for violations of his civil rights while incarcerated at Avenal State Prison. (Doc. 11.) The magistrate judge screened Plaintiff's amended complaint pursuant to 28 U.S.C. § 1915A(a) and found Plaintiff stated a cognizable claim for violations of his Eighth Amendment rights against Defendant "John Doe," Avenal State Prison Food Service Head Manager. (Doc. 12 at 5-7.) However, the magistrate judge found Plaintiff failed to state cognizable claims against any other named defendant. (*Id.* at 7-9.) The magistrate judge granted Plaintiff leave to amend, or indicated he may notify the Court of his willingness to proceed on the cognizable claim. (*Id.* at 10.) In response, Plaintiff indicated he was willing to proceed only on the cognizable claim. (Doc. 13 at 1.)

Based upon Plaintiff's response, the magistrate judge recommended: (1) this action proceed only on Plaintiff's Eighth Amendment conditions of confinement claim against Defendant John Doe; (2) Defendants Gamboa, Hernandez, ASP Correctional Cooks, J. Moekly,

1 H. Moseley, and A. Shimmin be dismissed; and (3) all other claims in Plaintiff's amended
2 complaint be dismissed. (Doc. 14 at 2.) The Court served the Findings and Recommendations on
3 Plaintiff and notified him that any objections were due within 14 days. (*Id.*) The Court advised
4 him the "[f]ailure to file objections within the specified time may result in the waiver of rights on
5 appeal." (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Plaintiff did
6 not file objections, and the time to do so has passed.

7 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
8 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations
9 are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 10 1. The Findings and Recommendations issued on September 30, 2024 (Doc. 14) are
11 **ADOPTED** in full.
- 12 2. This action **SHALL** proceed only on Plaintiff's Eighth Amendment conditions of
13 confinement claim against Defendant John Doe, ASP Food Service Head
14 Manager.
- 15 3. All other claims in Plaintiff's first amended complaint are **DISMISSED**.
- 16 4. Defendants Martin Gamboa, Hernandez (ASP Kitchen Staff), ASP Supervising
17 Correctional Cooks, J. Moekly, H. Moseley, and A. Shimmin are **DISMISSED**.
- 18 5. The matter is referred to the magistrate judge for further proceedings.

19
20 IT IS SO ORDERED.

21 Dated: **October 21, 2024**


UNITED STATES DISTRICT JUDGE